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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/588,211	06/06/2000	Francis R. Koperda	191910-1061	9999

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SCIENTIFIC-ATLANTA, INC.
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EXAMINER

CARDONE, JASON D

ART UNIT PAPER NUMBER

2145

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/588,211

Applicant(s)

KOPERDA ET AL.

Examiner

Jason D. Cardone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 19,20,22,23 and 26-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19,20,22,23 and 26-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 June 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the amendment of the applicant, filed on 1/7/05.

Claims 19, 20, 22, 23 and 26-41 are presented for further examination.

Claim Rejections - 35 USC § 112

2. Claims 26, 29, 36 and 40 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 26, 29, 36 and 40 disclose "preauthorized level of service". The specification does disclose authorized level of service but not preauthorized levels.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

4. Claims 19 and 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 19 and 32 disclose monitoring data and then storing data related thereto. The claims do not distinctly claim a difference between the two mentions of "data".

5. Claim 32 recites the limitation "the data transmitted" in the third limitation. There is insufficient antecedent basis for this limitation in the claim., since an earlier reference is to "an amount" of data transmitted.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 19, 20, 22, 23 and 26-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liebowitz et al. ("Liebowitz"), USPN 5,812,545, in view of Szurkowski, USPN 5,631,846.

9. Regarding claim 19, Liebowitz discloses a method of providing statistics for billing users of data services provided over a cable television network comprising the

steps of: monitoring a length of an upstream connection of a network access device and storing data related thereto [Liebowitz, col. 17, lines 34-43 and col. 19, lines 40-50];

monitoring an amount of data transmitted across the upstream connection and storing data related thereto [Liebowitz, col. 18, lines 14-24 and col. 19, lines 40-67]; and

Liebowitz does disclose monitoring amount of data lost in the link and storing data related thereto, the statistics permitting a flexible billing structure [Liebowitz, col. 4, lines 30-50, col. 8, lines 25-33 and col. 17, lines 44-57]. Liebowitz does not disclose monitoring an amount of data rejected as exceeding a requested bandwidth and storing data related thereto. However, Szurkowski, in the same field of endeavor, discloses monitoring an amount of data rejected as exceeding a requested bandwidth and storing data related thereto [Szurkowski, col. 4, line 40 – col. 5, line 30]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the monitoring of exceeding data, taught by Szurkowski, in to the monitoring system, taught by Liebowitz, in order to provide a sufficient upstream channel.

10. Regarding claims 20 and 31, Liebowitz-Szurkowski further discloses monitoring and storing the start time of the connection [Liebowitz, col. 19, lines 40-50].

11. Regarding claim 22, Liebowitz-Szurkowski further discloses recording the address of the network access device and of the apparatus to which the network access device is linked during the connection [Liebowitz, col. 19, lines 40-50].

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12. Regarding claim 23, Liebowitz-Szurkowski further discloses providing a plurality of service tiers depending on maximum-shared bandwidth or bit rate [Liebowitz, col. 19, lines 14-67].

13. Regarding claims 26 and 29, Liebowitz-Szurkowski further discloses storing preauthorized level of service data for subscribers, an administration computer communicating the preauthorized level of service data to a link access controller for regulating service at the preauthorized level [Liebowitz, col. 18, lines 33-58 and col. 19, lines 14-67] [Szurkowski, col. 6, lines 10-26].

14. Regarding claims 27 and 28, Liebowitz-Szurkowski further discloses receiving parametric statistical data for a session of a network access device at an administration computer, wherein the parametric statistical data comprises amount of data transferred [Liebowitz, col. 18, lines 14-58 and col. 19, lines 14-67].

15. Regarding claim 30, Liebowitz-Szurkowski further discloses monitoring the bit error rate of the data transmitted across the upstream connection and storing data related thereto [Liebowitz, col. 4, lines 30-50, col. 8, lines 25-33 and col. 17, lines 44-57] [Szurkowski, col. 4, line 40 – col. 5, line 30].

16. Regarding claims 32-41, claims 32-41 have similar limitations as claims 19, 20, 22, 23 and 26-30. Therefore, they are rejected under Liebowitz-Szurkowski for the

same reasons set forth in the rejection of claims 19, 20, 22, 23 and 26-30 [Supra 19, 20, 22, 23 and 26-30].

Response to Arguments

17. Applicant's arguments with respect to claims 19, 20, 22, 23 and 26-41 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

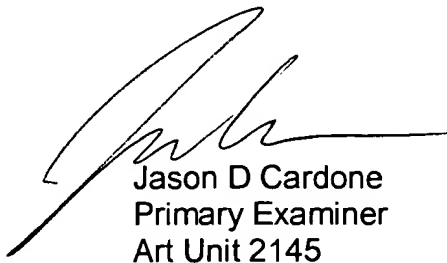
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason D. Cardone whose telephone number is (571) 272-3933. The examiner can normally be reached on Mon.-Thu. (6AM-3PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (571) 272-6159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jason D Cardone
Primary Examiner
Art Unit 2145

May 7, 2005